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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 UNITED STATES OF AMERICA,
12 Plaintiff,
13 v.
14 BRENT ROGER WILKES,
15 Defendant.
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Case No.: 07cr330-LAB-1 and
15cv2841-LAB

**ORDER GRANTING IN PART AND
DENYING IN PART MOTION FOR
CLARIFICATION OR
CORRECTION OF THE RECORD**

[DOCKET NUMBER 549.]

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18 On April 17, the Court construed Defendant Brent Wilkes' two filings as his
19 response to the Court's order of January 8.¹ Because the two filings mentioned numerous
20 documents Wilkes said he needed, the Court construed them as including a motion for
21 reconsideration of its earlier orders denying discovery, and denied reconsideration.

22 Wilkes has now filed a motion styled "Motion for Clarification or Correction of
23 Record and Relief from Court Order." (Docket no. 549.) In it, he takes issue with the
24 Court's April 17 order and asks that the Court withdraw it. This, in effect, amounts to a
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27 ¹ When Wilkes failed to file the kind of response the January 8 order required, the Court on April 4 gave
28 Wilkes more time to file it, and cautioned him that if he failed to do so, the Court would construe his
earlier filing as his response.

1 motion for reconsideration of an order denying reconsideration. His motion takes issue
2 with various remarks in the order, which he claims are inaccurate.

3 Wilkes' motion goes back and forth about whether he was or is seeking discovery,
4 alternating between denials that he is seeking discovery and demands for evidence the
5 believes has been withheld or made unavailable to him. On page four, for example, it says
6 **"The Declaration is not a veiled Motion for Discovery."** (emphasis in original).
7 Immediately afterwards, however, it says evidence Wilkes needs is in the possession of the
8 government or non-parties. (*Id.* at 4–5.) It then says "Preparation for a hearing will require
9 a search through all the vast quantity of evidence to locate and organize the evidence"
10 (*Id.* at 5.) Then it again denies that discovery is needed, explaining that Wilkes and his
11 trial counsel Federal Defenders already have enough information. (*Id.*) But then it goes
12 on to say he is seeking additional documents that he doesn't have. (*Id.* ("**Wilkes has**
13 **identified the items he seeks in his declaration** and knows for a fact of their existence."))
14 Then it demands evidence he claims the government is withholding from him. (*Id.* at 6
15 ("[T]his material (known to exist and to have been taken by the government for no reason)
16 must now be located."))

17 It may be that Wilkes misunderstands what discovery is, and incorrectly believes it
18 refers only to learning about new evidence, as opposed to obtaining evidence not in his
19 control. But whatever he believes, his request is not well-taken. Wilkes was ordered, more
20 than once, to file a declaration including all the facts he wished the Court to consider when
21 deciding whether his trial counsel Mark Geragos provided ineffective assistance of
22 counsel. (*See* Docket no. 543 (order requiring Wilkes to file his declaration forthwith, and
23 referencing an earlier order).) His declaration was to have identified all testimony or other
24 evidence he wanted to present, and all exhibits were to have been authenticated. (*Id.* at
25 1:17–23.) To the extent Wilkes is seeking to obtain documents from the government or
26 third parties, he has not explained why reconsideration of any of the Court's earlier orders
27 denying discovery would be appropriate. To the extent the evidence he has is already
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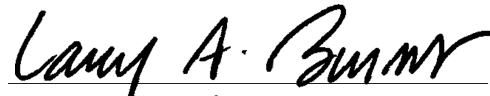
1 within his control, he does not need discovery. And in any event, the time for submitting
2 new evidence is well past.

3 Wilkes' motion also offers an explanation for his submitting his declaration in
4 multiple installments. But the Court already accepted those, and construed them together
5 as his response.

6 In the motion's concluding paragraph, Wilkes asks that the Court either withdraw
7 its April 17 order or else allow his motion to remain in the docket as an explanation of his
8 position, apparently in anticipation of an appeal. He has not shown any good reason for
9 the Court to withdraw or amend its order, and that request is **DENIED**. His request that
10 the motion be accepted for filing is, however, **GRANTED**. It is now part of the record,
11 and the explanations it contains are available to this Court and any reviewing court.

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13 **IT IS SO ORDERED.**

14 Dated: December 7, 2018



Hon. Larry Alan Burns
United States District Judge